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KOFI KISSI DOMPERE
Petitioner,

v.

OFFICE OF TAX & REVENUE
Respondent

Case No.: TR-C-06-800048

FINAL ORDER

I. INTRODUCTION

This case arises under D.C. Official Code § 47-4401 and the Office of Administrative Hearings Establishment Act, D.C. Official Code § 1831.03(b)(4), as amended. On February 27, 2006, Petitioner Kofi Kissi Dompere filed a Taxpayer's Protest of a Proposed Assessment with this administrative court ("OAH"). In his Protest, Petitioner requested a hearing to appeal a Notice of Proposed Assessment of Tax Deficiency ("Notice") issued by the District of Columbia Office of Tax and Revenue ("OTR" or "Government") on January 27, 2006. The Notice assessed an income tax deficiency of \$4,338 for the 2003 tax year.

After denying two Motions to Dismiss filed by OTR, the undersigned Administrative Law Judge convened a status conference in this matter on April 26, 2006, during which the parties agreed to a discovery schedule and a hearing date of June 9, 2006. As part of the discovery process, Petitioner met with OTR on May 5, 2006, to review with an OTR auditor any documentation to support his claimed deductions he wished to present, and to determine what else he might need in support. At the June 9, 2006, hearing Petitioner appeared and testified on

his own behalf. Edward A. Blick, Esquire, Assistant General Counsel, appeared as counsel on behalf of the Government. Mary M. Scott, Senior Tax Auditor in OTR's Audit Division, and Joseph P. Goosby, Supervisory Tax Auditor in OTR's Review and Conference Section, testified for the Government. During the hearing, Respondent OTR's Exhibits 200 through 214 were admitted into evidence.¹ At the end of the hearing, OTR submitted a "Status Report" documenting its revised calculations of Petitioner's tax deficiency.

Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

On April 12, 2004, Petitioner filed his D-40 Individual Income Tax Return with the District of Columbia for the 2003 tax year.

Petitioner listed \$67,552 in wages (Respondent's Exhibit ("RX") 200) and \$1,378.70 in taxable interest (RX 200, 205) on the tax return. Petitioner claimed the following deductions:

Medical Expenses:	\$ 3,987.46
Gifts to Charity:	\$14, 139.16
Job Expenses	\$14,104.03
Federal Return Schedule C: Profit or Loss from Business	\$ 2,690.00
Federal Return Schedule E: Supplemental Income and Loss from Rental Real Estate, Royalties, etc.	\$15,282.00
TOTAL	\$50,202.65

¹ Petitioner had failed to file a witness list or list of exhibits, as required by the Status Conference Order issued on April 28, 2006, and was therefore not permitted to submit documents during the hearing.

RX 201, 203-204, 206, 208. After deducting his personal exemption, Petitioner claimed taxable income on his return of \$11,626.00. On review, OTR disallowed all of Petitioner's deductions and advised him that he had a deficiency in the amount of \$4,338.

Medical Expenses:

Petitioner had been in and out of the hospital over the years. He provided cancelled checks in the amount of \$218 to OTR, but no other documentation to support his claim of \$7,809.40 in medical expenses for 2003.

Gifts to Charity:

Petitioner hosts a radio program for public radio station 89.3 FM. In his radio program, Petitioner plays compact discs that he makes from his home record collection. Petitioner does not give the CDs or records to the radio station. Petitioner claimed a charitable deduction on his tax return in the amount of \$13,959.16. Petitioner's documentation to establish his entitlement to this charitable deduction, filed with his 2003 DC Tax Return, consisted of a one page summary giving the category of items for which he was claiming deductions (e.g., albums/CDs, speaker, VCR, transportation, parking, miscellaneous, accessories, interest cost, maintenance), the year of acquisition of the item, if applicable, a value, the manner of depreciation and an expense for that item (RX 209) and a one page list by categories of the types of music in his collection, a round number of the volumes in each category and an estimated valuation attributed to the collection by Petitioner (RX 212). Petitioner provided no itemized receipts or cancelled checks to verify the valuations he attributed to his music collection.

Job Expenses:

Petitioner claimed \$15,123.26 for Job Expenses and Other Miscellaneous Deductions. After subtracting the required 2%, Petitioner deducted \$14,104.03 for these expenses. Petitioner is a professor at Howard University. He has published a number of books and articles, using a library of materials he has collected over 30 years. Of the \$14,104.03 in deductions, Petitioner listed \$11,307 as his business expense deductions based on what he claimed to be his costs to produce six articles during 2003. Petitioner's documentation to establish his entitlement to this deduction, filed with his 2003 DC Tax Return, consists of a one page summary giving the title and a total dollar amount of expense for each article, from which he deducted a \$2,000 contribution by Howard University, the sum of \$6,326 in "unpaid expenses" (unexplained) and \$1,317 for "gifts in kind products" (unexplained). RX 210. Petitioner provided no itemized receipts to verify the expenses listed.

Petitioner also claimed \$3,816.26 in Employee Business Expenses. He attached a copy of his Federal Form 2106 (RX 213 and 214) to his 2003 D.C. return on which he claimed \$3,116.26 for vehicle expenses and \$700 for parking and tolls. Petitioner provided no itemized receipts or travel log to support the expenses listed.

Schedule C Profit or Loss from Business:

Petitioner also makes and sells greeting cards. He claimed a loss of \$2,690 and attached a copy of the Schedule C (RX 206 and 207) from his 2003 Federal Income Tax Return. On the Schedule C, petitioner deducted \$450 as the cost of goods sold from the gross receipts of \$560 without having filled out Part III on page 2 of the form, from which the cost of goods sold was to be derived. Petitioner provided OTR with samples of his cards and order forms. He provided no

documentation to substantiate the advertising, car expenses, mortgage, office expense or travel expenses claimed to support the \$2,690 loss he claimed.

Schedule E Losses:

As part of the deductions from gross income, Petitioner claimed \$15,282 in losses for a rental property and two royalty producing properties. RX 208. Petitioner did not describe any of the properties as required by Part I on the Schedule E from his Federal Tax Return submitted with his 2003 D.C. Income Tax Return.

In his meeting with OTR on May 5, 2006, Petitioner provided sufficient documentation to validate his claimed losses on the one rental property in the amount of \$4,072. Petitioner provided no documentation to substantiate the interest, repairs, taxes or unspecified “other” deductions Petitioner claimed.

III. DISCUSSION AND CONCLUSIONS OF LAW

Petitioner challenges OTR’s assessment of an income tax deficiency on his 2003 Individual Income Tax Return based on disallowed deductions. Deductions allowed on the DC D-40 Individual Income Tax Return are generally the same as allowed by the U.S. Internal Revenue Service 1986 Tax Code, and are further described in Chapter 18 of the District of Columbia Official Code, 2001 edition, as follows:

(b) Deductions allowed -- Generally. -- In the case of an individual, estate, or trust, deductions allowed under this section shall be the same (and to the same extent) as the deductions allowed by the Internal Revenue Code of 1986 on federal individual or fiduciary income tax returns;

D.C. Code, 2001 Ed. § 47-1803.3(b). The record-keeping requirements to support allowable deductions are set forth as follows:

§ 47-1812.02. Records and statements [Formerly § 47-1812.2]

Every person upon whom the duty is imposed by this chapter to file any applications, returns, or reports or who is liable for any tax imposed by this chapter shall keep such records, render under oath such statements, and comply with such rules and regulations as the Mayor from time to time may prescribe. Whenever the Mayor deems it necessary, he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as he believes sufficient to show whether or not such person is liable to tax under this chapter and the extent of such liability.

While it is generally well settled that “tax laws are to be strictly construed against the state and in favor of the taxpayer,” “the Supreme Court has differentiated deductions from other sorts of tax provisions under ‘the “familiar rule” that “an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer.”’ *School St. Assoc. Ltd. P’ship v. District of Columbia*, 764 A.2d 798, 805 (D.C. 2001) (Internal citations omitted.) *See also, Doudney v Comm’r*, T.C. Memo 2005-267, 2005 Tax Ct. Memo LEXIS 269 * 11-12, holding that deductions:

are a matter of legislative grace, and the taxpayer must clearly demonstrate entitlement to the claimed deductions. A taxpayer must keep records adequate to allow the Commissioner to establish the amount of his deductions...A taxpayer must also produce those records upon request for inspection by authorized [tax authorities]. We are not required to accept an interested party’s self-serving testimony that is uncorroborated by persuasive evidence.

(Internal citations omitted).

With the exception of the one rental property loss in the amount of \$4,072 which OTR conceded, Petitioner has failed to produce the records required to establish his right to any of the other deductions claimed.

Medical Expenses:

As reflected on Schedule A of Petitioner's 1040 U.S. Individual Income Tax Return, Petitioner alleged that he incurred \$7,809.40 in unreimbursed medical expenses during 2003 and claimed \$3,987.46 as his itemized deduction for these medical expenses, after deducting 7.5% of his adjusted gross income ("AGI"). Petitioner contended that he gave whatever supporting documentation he had to OTR when he met with them on May 5, 2006. Mary Scott, OTR's Senior Tax Auditor, testified that to substantiate his medical expenses, Petitioner needed hospital, laboratory or doctor's receipts, cancelled checks and/or proof of insurance non-reimbursement. Petitioner provided cancelled checks in the amount of \$218 to support these expenses. That sum does not exceed the 7.5% of AGI. Accordingly, Petitioner's claimed deduction of \$3,987.46 for medical expenses was appropriately disallowed by OTR.

Gifts to Charity:

Petitioner claimed a charitable deduction on his tax return in the amount of \$13,959.16. Petitioner's documentation to establish his entitlement to this charitable deduction, filed with his 2003 DC Income Tax Return, consisted of a one page summary giving the category of items and an estimated value for which he was claiming deductions. Ms. Scott testified that to qualify as a charitable deduction, Petitioner needed either receipts from the charity or cancelled checks.

As an initial matter, under Section 170 of the Internal Revenue Code (26 USC § 170) and its implementing regulations (26 Code of Federal Regulations ("C.F.R.") § 1.170), deductions for charitable donations are permitted only if made to a qualified organization. Petitioner provided no evidence that the public radio station where he hosts a radio program meets the

requirements of a qualified organization. On that basis alone, Petitioner's charitable deduction claim could be denied.

Assuming *arguendo* that the public radio station is a qualified organization, deductions for charitable donations are allowed if verified as described in the regulations. 26 C.F.R. § 1.170A-13 prescribes the regulations for "recordkeeping and return requirements for deductions for charitable contributions." Taxpayers who make charitable contributions of property other than money need to obtain a receipt showing specific information set forth in §1.170A-13(b). Where obtaining a receipt is not practical (e.g. property is deposited at a drop site), the taxpayer "shall maintain reliable written records with respect to each item of donated property that includes the information required by (b)(2)(ii)."

§1.170A-13(b)(2)(ii) requires written records include, *inter alia*:

- (A) The name and address of donee organization to which the contribution was made
- (B) The date and location of the contribution
- (C) A description of the property in detail reasonable under the circumstances (including the value of the property)...
- (D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

If the taxpayer is claiming a deduction in excess of \$5000, the deduction will not be allowed unless the taxpayer complies with the substantiation requirements of §1.170A-13(c)(2): (1) obtaining a qualified appraisal; (2) attaching a fully completed appraisal summary to the tax return; and (3) maintaining records containing the information set forth in (b)(2)(ii) discussed above.

Petitioner admitted that he was using an estimated cost per album or CD in coming up with the valuations on his one page summary. Joseph P. Goosby, OTR's Supervisory Tax Auditor, testified that under D.C.'s record-keeping requirements, estimates are not acceptable.

More critically here, Petitioner conceded in his testimony that he did not give anything tangible to the radio station. Rather, he uses his record library to produce a CD which he plays on the radio program, but gives neither the CD nor the record library to the radio station. 26 C.F.R. § 1.170-2(a)(2) precludes any deduction for the contribution of services, except for unreimbursed expenses incident to the performance of such services (e.g., the cost of a uniform, without general utility, used to perform donated services.)

Petitioner argues that OTR's auditors did not understand the contemporary economic system, whereby he provides a service and claims as a charitable deduction the "fair market value" of the CDs he produces since he is not being paid. Petitioner also contends that if taxing authorities will accept the value of his book library, and allow him to depreciate that library, used in the "monetary production system," they must also accept his valuation of his music library which he uses in a "voluntary production system." Petitioner's argument is unpersuasive. With limited exceptions not applicable here, the Internal Revenue Service has repeatedly denied charitable contribution deductions when use of, but no interest in, property is given to a charity. *See, e.g.* 26 USC § 170(f)(3); *see generally* 40 A.L.R. Fed. 192. Further, Mr. Goosby, currently OTR's Supervisory Tax Auditor and previously a Senior Tax Auditor for 26 years, testified that the Federal Tax Code does not allow a deduction for depreciation or amortization of tangible personal property not wholly donated to the charitable organization.

Petitioner did not even provide a statement from the radio station confirming that he hosted any radio programs for the station. The complete absence of itemized documentation beyond Petitioner's one page summary renders his deduction insufficiently supported. Accordingly, OTR appropriately disallowed the \$13,959.16 in charitable deductions.

Job Expenses:

Petitioner claimed \$14,104.03 in job expenses and other miscellaneous deductions on his 2003 D.C. Income Tax Return. Petitioner's supporting documentation consisted of his schedules A&B from his 2003 Federal Tax Return, the Form 2106 Employee Business Expense Form from his 2003 Federal Tax Return and a one page summary titled "Cost of Self-Financed Academic Research for Merit Increase and Promotion at Howard University" giving the title and a total dollar amount of expense for six articles he wrote, totaling \$20,950, from which he deducted a \$2,000 contribution by Howard University, the sum of \$6,326 in "unpaid expenses" (unexplained) and \$1,317 for "gifts in kind products" (unexplained).

The Form 2106 Employee Business Expense Form Petitioner filed lists \$3,116.26 in vehicle expenses and \$700 in parking fees and tolls, for a total of \$3,816.26. Petitioner claimed that entire sum as deductible employee business expenses, without filling out anything in Section A on page 2 of the Form which states "You must complete this section if you are claiming vehicle expenses." Mr. Goosby testified that the only things Petitioner presented at the May 5, 2006, meeting with OTR in this area were a few parking receipts which he could not tie to a particular business purpose.

Generally, trade or business expenses are deductible under IRC §162 (26 USC §162):

(a) In general. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

An ordinary expense is one that is common and acceptable in the particular business. *Welch v. Helvering*, 290 U.S. 111, 113-114 (1933). A necessary expense is an expense that is appropriate and helpful in carrying on a trade or business. *Heineman v. Comm'r*, 82 T.C. 538, 543 (1984). In addition, certain research expenses are deductible as provided in IRC §174 (26 USC §174):

§ 174. Research and experimental expenditures.

(a) Treatment as expenses.

(1) In general. A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

Further, IRC §174(b) (26 USC §174(b)) allows the amortization of research expenses. To be deductible, the expenses must be reasonable under the circumstances. IRC §174(e) (26 USC §174(e)).

Ordinarily, taxpayers do not have to substantiate expense account information, except, *inter alia*, where (1) a taxpayer is not required to account or does not account to his employer; or

(2) the taxpayer has expenses that exceed the amount the employer has reimbursed him/her. Records to substantiate such expenses must “be sufficient to enable the Commissioner to correctly determine income tax liability.” Regs 1.162-17(d)(2) (26 C.F.R. § 1.162-17(d)(2)). The burden of proof is on the taxpayer, who can substantiate his expenses by keeping detailed records of transportation, entertainment, travel, etc. If no records are available, the taxpayer may provide secondary sources of information and evidence (i.e. plane fares on a given day, hotel bills, etc.). Regs 1.162-17(d)(3) (26 C.F.R. § 1.162-17(d)(3)). However, when a deduction is questioned by the taxing authority, a taxpayer must provide adequate substantiation of the expenses claimed.

Besides his personal library which he estimated, without any proof to back up his estimate, was valued at over \$500,000, Petitioner claimed that as part of his expenses the cost of photocopying other research materials from libraries. Petitioner alleged that he had over 8,000 Xeroxed pages. He explained that he also took into account printing costs, computer time and ink in calculating his deductible losses, that he provided proof of these expenses to OTR which it ignored, and he asked this administrative court to take on faith that he had the supporting documentation.²

As the Tax Court noted in *Doudney*, 2005 Tax Ct. Memo LEXIS 269 *at 12, “Petitioner[] had an obligation to substantiate [his] deductions in the manner required by the [Internal Revenue] Code. Sec. 6001 (26 U.S.C. § 6001); sec. 1.6001-1(e), Income Tax Regs. Petitioner[] also had an obligation to produce the required records upon request by respondent. Sec.

² The undersigned Administrative Law Judge admonished Petitioner numerous times during the evidentiary hearing, when he tried to offer documents which he may or may not have presented to OTR during his meeting with the auditors on May 5, 2006, that his failure to file even a list of the documents he intended to present at the hearing, let alone the documents themselves, in accordance with the April 28, 2006, Status Conference Order, precluded their use at the hearing.

7602(a).” *Id.* Self serving testimony that is uncorroborated by persuasive evidence is insufficient to meet Petitioner’s burden. Accordingly, OTR appropriately disallowed the \$14,104.03 in deductions for Job Expenses and Other Miscellaneous Deductions.

Schedule C Profit or Loss From Business:

Petitioner claimed \$2,690 in losses from a business where he produces greeting cards. Petitioner reported the losses on Federal Schedule C Profit or Loss From Business Form. The Schedule C Form was Petitioner’s only supporting documentation, although he attempted to put samples of the greeting cards into evidence. As with his other business deductions, Petitioner claimed car expenses without filling out the required information in Part IV of the Schedule C. He also provided no information in Part III on the Cost of Goods sold. Petitioner listed \$110 in gross income from the sale of the greeting cards, while listing the following deductions:

Advertising:	\$760
Car Expenses:	\$120
Mortgage:	\$350
Office expense:	\$1,250
Travel:	\$200

Petitioner failed to provide any receipts whatsoever for the expenses claimed. Although he claimed that he did not take a home office deduction, Petitioner could not explain the basis for claiming mortgage and office expenses as part of his losses. Petitioner failed to substantiate any of these expenses. For the reasons stated above, OTR properly disallowed Petitioner’s claim of \$2,690 in losses for these business expenses.

Schedule E Losses:

Petitioner claimed \$15,282 in losses on the Federal Schedule E Supplemental Income and Loss Form filed with his 2003 D.C. Income Tax Return. The form is used to report income and losses for rental properties and royalties. Petitioner did not identify the properties for which he claimed these deductions as required by Part I of the form.

Petitioner provided no documentation supporting this deduction during the evidentiary hearing. However, during his meeting with OTR on May 5, 2006, Petitioner apparently presented checks covering Petitioner's homeowners' association dues at River Park. While OTR claimed at the hearing that Petitioner had to provide proof that the property was a rental property, it acknowledged that he had shown rental income in prior years and claimed \$500 in rents received for 2003. Finally, OTR conceded that Petitioner had provided sufficient documentation to cover the \$4,072 loss claimed in relation to this property and agreed to credit him for this deduction.

Regarding the royalty claims, Petitioner listed \$6,115 in losses on one undescribed property and \$5,095 in losses on another property, similarly with no description provided. During the hearing, Petitioner pulled some books out of his bags and attempted unsuccessfully to associate them to the royalty deductions claimed. Petitioner failed to provide any cancelled checks, invoices or other documentation from third parties to support his claimed royalty expenses.

For the reasons stated above, OTR properly disallowed Petitioner's claim for royalty losses of \$11,210. His claim for \$4,072 in losses for his rental property was documented sufficiently to warrant that deduction.

Summary:

Having credited Petitioner with the \$4,072.00 in Schedule E Rental Expenses, OTR calculated Petitioner's taxable income for 2003 as \$57,756.65, and his current deficiency as \$3,961.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 29th day of December, 2006:

ORDERED, that the following deductions claimed by Petitioner on his 2003 D.C. Income Tax Return were properly disallowed:

Medical Expenses:	\$ 3,987.46
Gifts to Charity:	\$14, 139.16
Job Expenses	\$14,104.03
Federal Return Schedule C: Profit or Loss from Business	\$ 2,690.00
Federal Return Schedule E: Supplemental Income and Loss from Rental Real Estate, Royalties, etc.	\$11,210.00
TOTAL	\$46,130.65

And it is further, **ORDERED**, that the correct income tax deficiency for Petitioner for the 2003 Tax Year is \$3,961, and it is further

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.

December 29, 2006

Beverly Sherman Nash

Beverly Sherman Nash
Administrative Law Judge